

IN THE UNITED STATES MAGISTRATE COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, ) CRIMINAL NO.  
Plaintiff ) 3:13-CR-446-B  
VS. ) DALLAS, TEXAS  
WAYNE JOSEPH SWEENEY (1), )  
Defendant ) FEBRUARY 18, 2014

TRANSCRIPT OF REARRAIGNMENT PROCEEDINGS  
BEFORE THE HONORABLE IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
BY: MR. GEORGE LEAL  
Assistant United States Attorney  
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P R O C E E D I N G S

FEBRUARY 18, 2014

THE COURT: Good morning. Please be seated.

MR. LEAL: Good morning, Your Honor.

THE COURT: United States versus Wayne Joseph  
Sweeney.

MR. LEAL: Good morning, Your Honor. George Leal  
for the United States.

THE COURT: And, Mr. Sweeney, if you would,  
please, raise your right hand and be sworn.

(The defendant was sworn by the Court.)

THE COURT: You understand, sir, that you are  
now under oath and that if you answer any of my questions  
falsely, that you could later be prosecuted for perjury or  
making a false statement.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Tell me your whole name for the record.

THE DEFENDANT: Wayne Joseph Sweeney.

THE COURT: How old are you?

THE DEFENDANT: 53.

THE COURT: How much education have you had?

THE DEFENDANT: High school and Associate's in  
science.

THE COURT: Within the last six months, have you  
been under the care of any doctor?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you ever been hospitalized or  
3 treated for narcotics addiction or alcoholism?

4 THE DEFENDANT: SAFP, yes, ma'am.

5 THE COURT: All right. And how long ago was that?

6 THE DEFENDANT: Six years ago.

7 THE COURT: How long have you been in custody?

8 THE DEFENDANT: Five months. I'm a recovering  
9 alcoholic.

10 THE COURT: And have you been clean during those  
11 five months?

12 THE DEFENDANT: Oh, yes, ma'am.

13 THE COURT: Have you --

14 THE DEFENDANT: Seven years.

15 THE COURT: I'm sorry?

16 THE DEFENDANT: Seven years.

17 THE COURT: All right. Good for you.

18 Have you ever been diagnosed with any emotional or  
19 mental disability or problem?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Are you now under the influence of  
22 alcohol or any drug?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Is there anything that you know of  
25 that might in any way affect your ability to understand

1 why you're here today and what you're going to do?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Are you comfortable that you do fully  
4 understand what it is that you're here for?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is there any reason to believe Mr.  
7 Sweeney is not fully competent to enter a plea of guilty?

8 MR. DAY: No, Your Honor.

9 THE COURT: Do you believe his plea will be a  
10 knowing and voluntary plea?

11 MR. DAY: I do.

12 THE COURT: Mr. Sweeney, you have the right to  
13 enter your plea of guilty before the district judge who  
14 is assigned to your case, but you can agree to have a  
15 magistrate judge take your plea and make a recommendation  
16 to the judge that she either accept or reject it.

17 I have here a signed notice and consent form that I'm  
18 holding up. Do you see the signature here at the bottom?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Is this yours?

21 THE DEFENDANT: Yes, it is.

22 THE COURT: Did you read this notice and consent  
23 before you --

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: -- signed it?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. I'm going to ask you to please  
3 wait until I finish my question so that the court reporter  
4 can take it down, and then she'll take down your answer.  
5 She can't take down both of us at the same time.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Thank you.

8 All right. So you did read the notice and consent  
9 before you signed it.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Did you discuss it with Mr. Day?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you still want to go forward before  
14 a magistrate judge?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: I find that consent has been given  
17 knowingly and voluntarily, and we will proceed with the  
18 proposed plea.

19 You have the right to plead not guilty to any offense  
20 charged against you, and if you plead not guilty, the  
21 Constitution guarantees you certain rights:

22 The right to a speedy and public trial by a jury in  
23 this district;

24 The right at trial for you to see, hear, and  
25 cross-examine all witnesses against you;

1           The right to use the power and process of the Court  
2           to compel the attendance of witnesses and production of  
3           evidence in your favor;

4           The right to the assistance of an attorney at all  
5           stages of the proceedings. If you could not afford an  
6           attorney, one would be appointed for you.

7           You could not be compelled to testify at trial.  
8           Whether or not you would testify would be your decision.

9           The government would have to prove your guilt beyond  
10          a reasonable doubt.

11          And if you were convicted, you'd have the right to  
12          appeal your conviction.

13          Do you understand that you have and are guaranteed  
14          each of these rights?

15                 THE DEFENDANT: Yes, ma'am.

16                 THE COURT: On the other hand, if you plead guilty  
17                 and if the district judge accepts your plea, there's not  
18                 going to be a trial. By pleading guilty, you're giving up  
19                 that right as well as those other rights that go with a  
20                 trial that I just described to you. If you plead guilty,  
21                 you will be convicted of the offense charged in Count One  
22                 of the indictment.

23          Do you understand the consequences of pleading guilty?

24                 THE DEFENDANT: Yes, ma'am.

25                 THE COURT: In federal court, it's the judge who

1 decides the sentence whether a defendant is convicted by a  
2 jury or upon a plea of guilty.

3 The United States Sentencing Commission issued  
4 guidelines for judges to follow in deciding the appropriate  
5 sentence in a criminal case. The Supreme Court later found  
6 that those guidelines were not mandatory but only advisory.  
7 That means that the judge has to consider how the guidelines  
8 might apply in your case, but she's not required to follow  
9 them.

10 Have you and Mr. Day and Mr. Linder talked about these  
11 guidelines and how they might apply in your case?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Even so, you understand that  
14 ordinarily you should not depend or rely upon any statement  
15 or assurance by anyone as to what sentence you'll get  
16 because only the judge can make that decision.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I understand that in this case you  
19 and the government have reached an agreement for a specific  
20 sentence. But it's important that you understand what the  
21 general process of sentencing is for a reason that I will  
22 explain in just a few minutes.

23 The judge doesn't make a determination of the  
24 appropriate sentence for a case until after a presentence  
25 report has been completed by the probation officer. In

1 order to prepare that report, the officer will interview  
2 you as well as agents of the government about the facts of  
3 the case.

4 The officer may also consider a document filed in  
5 this case called a factual resume. It lists facts that are  
6 agreed between you and the government. You should know that  
7 the probation officer isn't limited to this document. The  
8 officer can consider facts that are not listed here and  
9 disregard facts that are. If that happens, you may not  
10 be permitted to withdraw your plea of guilty.

11 You will, however, have an opportunity through your  
12 attorney to object to the presentence report.

13 In order to decide your sentence, the judge will  
14 consider the report, your objections, and any evidence  
15 presented at the sentencing hearing.

16 You do have the right to appeal whatever sentence you  
17 get unless you give up that right. In some cases, the  
18 government also has a right to appeal.

19 Parole has been abolished. So if you're sentenced to  
20 prison, you will not be released on parole.

21 Do you understand generally how the process of  
22 sentencing works?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And you've got Mr. Carl Day appearing  
25 with you today as your attorney, and I understand that Mr.



1 Phillip Linder represents you.

2 MR. DAY: Your Honor, my co-counsel is Larry  
3 Finstrom. Mr. Linder is no longer on the case.

4 THE COURT: Oh, then my paperwork is correct --  
5 incorrect, I mean. All right.

6 Have you had a full opportunity to talk to your  
7 attorneys about this case and your proposed plea of guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Are you fully satisfied with the  
10 representation and advice that you've received in connection  
11 with your case and your proposed plea of guilty from both  
12 Mr. Finstrom and Mr. Day?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you gotten a copy of the  
15 indictment?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Have you either read it or had it  
18 read to you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: You have the right to have it read  
21 out loud to you at this time, but you may waive the reading  
22 of the indictment. What would you like to do?

23 THE DEFENDANT: I wish to waive.

24 THE COURT: How do you plead -- I'm going to ask  
25 the Assistant United States Attorney to set out what we

1 call the essential elements of the offense. This is what  
2 the government would have to prove at trial in order to  
3 convict you on this charge. And I'm going to ask you some  
4 questions about the elements when he's done.

5 Mr. Leal.

6 MR. LEAL: Your Honor, the government would have  
7 to show:

8 First, that two or more persons, directly or  
9 indirectly, reached an agreement to distribute substances  
10 containing detectable amounts of synthetic cannabinoids,  
11 including substances containing controlled substance  
12 analogues PB-22 and 5F-PB-22, all of which are Schedule I  
13 controlled substances;

14 That the defendant knew the unlawful purpose of the  
15 agreement;

16 That the defendant joined in the agreement willfully,  
17 that is, with the intent to further its unlawful purpose;  
18 and

19 That the Schedule I controlled substance analogues  
20 being distributed during the course of the conspiracy were  
21 intended for human consumption.

22 THE COURT: Sir, do you understand each of these  
23 essential elements?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you admit that you committed each

1 of these essential elements?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: A defendant who is accused of a  
4 crime cannot plead guilty unless he is actually guilty of  
5 that crime. If you plead guilty, your plea should not be  
6 prompted or induced by any promises, threats, force, or  
7 coercion of any kind. A plea of guilty has to be purely  
8 voluntary, and you should plead guilty only because you  
9 are guilty and for no other reason.

10 Has anyone in any way tried to make you or get you to  
11 plead guilty in this case?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: I have here the plea agreement that  
14 was filed on February 5th. Do you have a copy there before  
15 you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Please look with me on page 10 and  
18 tell me if that is your signature above your typed name on  
19 that page.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Before you signed this plea agreement,  
22 did you fully read it?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Did you discuss it with your attorneys  
25 and ask them any questions you had about it?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Were you comfortable that you fully  
3 understood everything set out in the plea agreement before  
4 you signed it?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Are all of the terms of your agreement  
7 with the government set out in this written document?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: I'd like to go over some of those  
10 terms with you.

11 On page 2, paragraph 4, there is an agreement between  
12 you and the government that the sentence in this case should  
13 not exceed 120 months, and the government has agreed to  
14 recommend to the Court that it not impose a fine on you.

15 Because your plea agreement has this agreement, the  
16 district judge has to decide whether she will accept the  
17 plea agreement. If the judge does not accept the plea  
18 agreement, then you'll have the opportunity to withdraw  
19 your plea of guilty and to change it to not guilty.

20 Do you understand this is an option if the judge does  
21 not accept the plea agreement?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that if the judge  
24 does not accept the plea agreement and you choose to go  
25 forward with your plea of guilty, then you will be subject

1 to the general sentencing requirements that I explained  
2 earlier --

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: -- the general process that I  
5 explained earlier?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Now, with regard to the  
8 fine, the government has agreed to make a recommendation.  
9 This is not an agreement between the parties. Because it  
10 is a recommendation, do you understand that the Court is  
11 not bound by that recommendation?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And do you understand that if the  
14 judge does not accept the recommendation concerning the  
15 fine, you will still be bound by your plea of guilty?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: On page 3 also as part of paragraph  
18 4, there are certain agreements by the government and by  
19 yourself that a certain sentencing guideline application  
20 notes apply and that certain guidelines do not and there  
21 are certain stipulations here.

22 Again, because your plea agreement has these agreements  
23 between you and the government, the district judge has to  
24 decide if she's going to accept these limitations. If the  
25 judge does not accept the plea agreement, you'll have the

1 opportunity to withdraw your plea of guilty and change it  
2 to not guilty. You understand that.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Let's see.

5 On page 4 in paragraph 5, there is an agreement by the  
6 parties that the government is not going to oppose the two-  
7 level downward adjustment for acceptance of responsibility.

8 And, again, this is an agreement by the government  
9 not to oppose and to make this recommendation. Do you  
10 understand that ultimately it's the judge's decision?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: On page 5 in paragraph 8, there is  
13 an agreement by the government not to bring any additional  
14 charges against you based on the underlying conduct.

15 Because your plea agreement also has this promise by  
16 the government, the judge again has to decide whether she  
17 will accept it. If the judge does not accept your plea  
18 agreement, you'll have the opportunity to withdraw your plea  
19 of guilty and change it to not guilty. Do you understand  
20 that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: On page 6 in paragraph 11, there's a  
23 waiver of right to appeal. As I explained earlier, you do  
24 have that right unless you give it up. You understand that  
25 in paragraph 11, you've agreed to give up your right to

1 appeal except for the limited circumstances that are listed  
2 here.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand that in paragraph  
5 11, you've also agreed to give up your right to otherwise  
6 challenge your sentence?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You have the right to challenge your  
9 sentence and your conviction through what we call a writ  
10 of habeas corpus or a motion to vacate sentence. Do you  
11 understand that you have given up that right except for  
12 certain limited circumstances that are listed in paragraph  
13 11?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that you've only  
16 reserved your right to appeal or otherwise challenge your  
17 sentence in order to bring a direct appeal of a sentence  
18 exceeding the statutory maximum punishment, or an arithmetic  
19 error at sentencing, to challenge the voluntariness of your  
20 plea of guilty or this waiver, or to bring a claim of  
21 ineffective assistance of counsel?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Did you voluntarily and of your own  
24 free will agree to give up your rights to appeal or to  
25 otherwise challenge your sentence except for those limited

1 circumstances?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: On page 7 in paragraph 13, there's an  
4 agreement by you to give up all right, title, and interest  
5 you have in the property that is listed there.

6 Do you understand that in paragraph 13, you've agreed  
7 to give up any rights to this property and not to challenge  
8 the government's forfeiture or taking of the property  
9 through any type of proceeding?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Did you voluntarily and of your own  
12 free will agree to give up your rights to that property?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: On page 9 in paragraph 14, you've  
15 also agreed to the destruction of certain seized property.

16 Do you understand that you've agreed to the destruction  
17 of the property that's listed or described in that  
18 paragraph?

19 THE DEFENDANT: Yes, ma'am.

20 MR. LEAL: Judge, just one correction. In  
21 paragraph 13, the third sentence that says, "Noted is subject  
22 to forfeiture in paragraph 15," that should be paragraph 13.  
23 On page 7, paragraph 13, there is a typo there, and I ask  
24 that that be corrected.

25 THE COURT: All right. And, sir, do you agree to



1 the correction that's made on the record by the Assistant  
2 United States Attorney?

3 THE DEFENDANT: Where is that? I'm sorry.

4 THE COURT: Where it says 15, it should say 14?

5 MR. LEAL: Should say 13, Your Honor.

6 THE COURT: Paragraph 13 should say paragraph 13?

7 MR. LEAL: Yes, ma'am.

8 THE COURT: Okay. All right. Mr. Day, any  
9 discussion or dispute about that correction?

10 MR. DAY: No, Your Honor.

11 THE COURT: Okay. Sir, other than this written  
12 plea agreement, has anyone made you any promises or  
13 assurances of any kind in order to get you to plead guilty?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: By signing the plea agreement, are  
16 you asking that the Court approve and accept it?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you understand that you are  
19 pleading guilty to a felony and that conviction of a felony  
20 could deprive you of valuable rights of citizenship, such  
21 as the right to vote and the right to own a gun?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: In addition to that, you will face  
24 certain penalties and consequences if convicted on this  
25 charge. Mr. Leal is going to set those out.

1 MR. LEAL: Your Honor, the maximum penalties the  
2 Court can impose include:

3 Imprisonment for a term not more than 20 years.

4 A fine not to exceed \$1 million, or twice any pecuniary  
5 gain to the defendant or loss to victims.

6 A term of supervised release of not more than three  
7 years may be mandatory under the law and will follow any  
8 term of imprisonment. If Wayne Joseph Sweeney violates  
9 the terms and conditions of supervised release, he could  
10 be imprisoned for the entire term of supervised release.

11 A mandatory special assessment of \$100.

12 Restitution to victims or to the community which may  
13 be mandatory under the law and Wayne Joseph Sweeney agrees  
14 may include restitution arising from all relevant conduct  
15 not related to that arising from the offense of conviction  
16 alone, and costs of incarceration and supervision.

17 THE COURT: Do you understand, sir, that if you  
18 plead guilty, you will be subject to these penalties and  
19 consequences?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Having heard all this, how do you  
22 plead to Count One of the indictment, guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: Before I can recommend to Judge Boyle  
25 that she accept your plea, I have to find that there are

1 enough facts to support it. I do have here the factual  
2 resume that was filed on February 5th.

3 Do you have a copy there before you? Do you have a  
4 copy?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Please look with me on  
7 page 5 and tell me if that's your signature above your  
8 typed name on that page.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Before you signed this factual resume,  
11 did you fully read it?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Did you discuss it with your attorneys  
14 and ask them any questions you had about it?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Were you comfortable that you fully  
17 understood everything set out in the factual resume before  
18 you signed it?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Are the facts that are recited here  
21 true and correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You have the right to have these  
24 facts read out loud to you at this time, but you may waive  
25 the reading of the factual resume. What would you like to

1 do?

2 THE DEFENDANT: I wish to waive.

3 THE COURT: Being satisfied with the responses  
4 given during this hearing, I make the following finding on  
5 the record:

6 In the case of the United States of America versus  
7 Wayne Joseph Sweeney, Case 3:13-CR-446-B, Mr. Sweeney is  
8 fully competent and capable of entering an informed plea,  
9 his plea of guilty to Count One of the indictment is a  
10 knowing and voluntary plea supported by an independent  
11 basis in fact that contains each of the essential elements  
12 of the offense charged in Count One of the indictment.

13 The Court, therefore, recommends that his plea of  
14 guilty be accepted, and if it is, he will be adjudged  
15 guilty of the offense charged in Count One of the  
16 indictment.

17 I've signed a recommendation to Judge Boyle that she  
18 accept your plea of guilty, and I have signed a second copy  
19 that will be served on you in just a moment. If you have  
20 any objection to that recommendation, you will have 14 days  
21 from today to file those objections through your attorney.

22 As I explained earlier, the probation office is now  
23 going to prepare the presentence report to help the district  
24 judge at sentencing. You will be asked to give information  
25 for that report. Through your attorney, you will get a

1 copy of that report well before sentencing, and through  
2 your attorneys, you'll have a chance to make any objections  
3 that you think are appropriate.

4 You are scheduled for sentencing on June 5th at 1:30  
5 before Judge Boyle. Presentence report is due by April 24th.  
6 Any objections are due by May 8th. Any addendum to the PSR  
7 is due by May 22nd, and any objections to the addendum are  
8 due by May 29th. A scheduling order will issue with all of  
9 the relevant dates and times.

10 Sir, do you have any questions about anything that we  
11 have covered here today?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Mr. Day, is there anything else the  
14 Court should address?

15 MR. DAY: No, ma'am.

16 THE COURT: Mr. Leal?

17 MR. LEAL: Nothing further, Your Honor.

18 THE COURT: Good luck to you, Mr. Sweeney.

19 THE DEFENDANT: Thank you.

20 THE COURT: We're adjourned. Counsel are excused  
21 if they have no further matters before the Court.

22 MR. LEAL: Thank you, Your Honor.

23 (The proceedings were concluded.)  
24  
25

I N D E X

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CERTIFICATION

I certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Linda J. Langford Date: March 15, 2015.